

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

RICHARD JORDAN and RICKY CHASE,

Plaintiffs,

ROGER THORSON and ROBERT SIMON,

Intervenors,

v.

**BURL CAIN, Commissioner, Mississippi
Department of Corrections, et al., in his Official
Capacity; MARK McCLURE, Superintendent,
Mississippi State Penitentiary, in his Official
Capacity; the MISSISSIPPI STATE
EXECUTIONER, in his Official Capacity; and
UNKNOWN EXECUTIONERS, in their Official
Capacities,**

Defendants.

Civ. No. 3:15-cv-295-HTW-LGI

**NOTICE OF WITHDRAWAL OF
MOTION FOR ORDER UNDER THE ALL WRITS ACT,
FOR TEMPORARY RESTRAINING ORDER,
OR FOR PRELIMINARY INJUNCTION
BASED ON COUNT THREE OF THE FIRST AMENDED COMPLAINT**

Plaintiffs Richard Jordan and Ricky Chase (“Plaintiffs”), through their counsel of record, withdraw the Motion for Order under the All Writs Act Preserving this Court’s Ability to Render Full Judgment, or, in the Alternative, for Temporary Restraining Order or Preliminary Injunction Based on Count Three of the First Amended Complaint (“All Writs Act Motion”)¹ as it pertains

¹ Doc. 260 (“All Writs Act Motion” or “the Motion”).

to parties other than Mr. Loden, without prejudice to seek the same or similar relief at a later time.² As a result, Plaintiffs submit to the Court that the hearing set for January 19, 2023 may be cancelled. With respect to the withdrawal of the Motion, counsel for Plaintiffs represent the following to the Court:

On October 19, 2022, Plaintiffs Richard Jordan and Ricky Chase (“Plaintiffs”) and Plaintiff-Intervenor Thomas Edwin Loden, Jr. (“Intervenor” or “Mr. Loden”) moved this Court for an Order under the All Writs Act and Fed. R. Civ. P. 65 enjoining the Defendants, their counsel, and anyone in active concert with them, including the State of Mississippi: (1) to withdraw the Motion to Set Execution Date filed by Attorney General Fitch on behalf of the State of Mississippi in Thomas Edwin Loden, Jr. v. State of Mississippi, Nos. 2002-DP-00282-SCT and 2006-CA-00432-SCT, and/or (2) to refrain from executing Intervenor Loden, or any of the Plaintiffs and Intervenor, until the litigation in this case is completed.³

On December 7, 2022, having requested further briefing and information from the parties and hearing the parties in oral argument, this Court denied the All Writs Act Motion with respect to the then-pending execution of Intervenor Loden.⁴ Mr. Loden’s execution took place as scheduled on December 14, 2022.

In its Memorandum Opinion and Order, the Court made clear that it was not adjudicating the merits of the Motion with respect to any plaintiff or intervenor other than Mr. Loden:

Although this Motion is styled as a motion for relief concerning all plaintiffs in this action, this Motion, as briefed and argued by counsel, primarily concerned the planned execution of Thomas Edwin Loden, Jr. Although much of the jurisprudence discussed in this Opinion seemingly would embrace the other plaintiffs, nevertheless, these plaintiffs are currently not in the same status as

² Intervenor Roger Thorson and Robert Simon did not join the All Writs Act Motion; however, the undersigned have confirmed that they do not object to the withdrawal of the motion.

³ Id.

⁴ Doc. 277, Memorandum Opinion and Order.

Loden: the Mississippi Attorney General has not requested the Mississippi Supreme Court to set an execution date for these other plaintiffs; thus, the Mississippi Supreme Court has not set such a date for any of them. Furthermore, according to Plaintiffs, discovery is incomplete. Next, the State of Mississippi has not declared any plans to proceed with executions of the other condemned inmates. **This court, thus, will reserve its ruling on these other plaintiffs** until the court has heard their specific arguments and objections from their respective counsel.⁵

The Court also set a hearing on January 19, 2023 to hear argument from the parties with respect to the All Writs Act Motion.⁶

Having considered the Court's order, Plaintiffs believe it would promote judicial economy to withdraw the All Writs Act Motion as it pertains to parties other than Mr. Loden, without prejudice to seek the same or similar relief at a later time. As a result, Plaintiffs submit to the Court that the hearing set for January 19, 2023 may be cancelled.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court (1) accept the withdrawal of Plaintiffs' Motion for Order under the All Writs Act Preserving this Court's Ability to Render Full Judgment, or, in the Alternative, for Temporary Restraining Order or Preliminary Injunction Based on Count Three of the First Amended Complaint (Doc. 260), without prejudice to seek the same or similar relief at a later time, and (2) cancel the January 19, 2023 hearing on the motion.

Dated: January 6, 2023.

⁵ Id. at 30-31 (emphasis added).

⁶ Id. at 31.

Respectfully submitted,

/s/ James W. Craig

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